IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

Crl.MC.No. 2904 of 2007()

CC.340/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, TRIVANDRUM

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PETITIONER: ACCUSED 1

MURALEEDHARAN, S/O MADHAVAPANICKER,
ASST. MANAGER, THIRUVALLA MARKET ROAD BRANCH,
NO.106, WOODLAND APPARTMENT, JAGATHY, THYCAUD,
PERMANENTLY RESIDING AT T.C.29/145,
KAWARADI ROAD, THIRUVANANTHAPURAM.

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.SHAJIN S.HAMEED

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. JAYACHANDRA BABU @ J.C.BABU,
S/O SADANANDAN, 'GOKULAM',
T.C.11/414, NAVODAYA GARDENS,
PANGOTTUKONAM, ULLOOR, THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2904 of 2007

Dated this the 18th day of September, 2007

O R D E R

The petitioner is the 1st accused in a prosecution for the offence punishable under Section 420 r/w 34 I.P.C. Cognizance has been taken on the basis of a final report submitted in 2004 and the case had been registered as C.C.No.340 of 2004 before the Judicial Magistrate of the First Class-II, Thiruvananthapuram. The petitioner, in 2007, has come before this Court with a prayer that cognizance taken is bad and may be quashed.

2. Why is the petitioner coming before this Court in 2007 in respect of a matter, cognizance in which has been taken in 2004 ? No satisfactory reasons are shown. The learned counsel for the petitioner submits that the petitioner has already entered appearance, but charges have not been framed yet.

3. I have perused the records. I am of the opinion that the petitioner must raise his plea for discharge under Section 239/240 Cr.P.C before the learned Magistrate as it is submitted that charges have not so far been framed. Needless to say that the learned Magistrate must consider the petitioner's plea for discharge at the stage of Section 239/240 Cr.P.C.

4. Premature termination of proceedings can be claimed as per the Code at the stage of Section 239/240 Cr.P.C. In every case where such premature termination is possible, it is not necessary for this Court to invoke its extraordinary inherent jurisdiction under Section 482 Cr.P.C. No reasons are shown to exist to invoke the powers under Section 482 Cr.P.C in favour of the petitioner, who has not admittedly claimed discharge so far before the court below.

5. In the result, this Crl.M.C is dismissed but with the specific observation that if charges have not already been framed, it shall be open to the petitioner to stake his claim for discharge under Section 239/240 Cr.P.C.

(R.BASANT, JUDGE)

rtr/-